IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 592 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANTABEN S DAVE

Versus

POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 592 of 1994

MR DR BHATT for Petitioner No. 1

MS. D.S. PANDIT, LD. AGP for Respondent No. 1

..... for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date of decision: 31/01/2005

CAV JUDGEMENT

1. Heard Shri. D.R. Bhatt, learned counsel for the

petitioner and Ms. D.S. Pandit, learned AGP for the respondents.

2. The petitioner in this petition has challenged the order of dismissal dated 16-12-1993 passed by the Police Commissioner, Ahmedabad City, on account of petitioner's conviction recorded by Learned Special Judge in Special Case No. 12 of 1993 dated 30-7-1993 for offences under the Corruption Act, ordering sentence of 2 years R.I. and fine of RS.500-00 and in default thereof imprisonment of 2 months. The petitioner was recruited as Woman Police Constable on 13-3-1965. Petitioner states that, thereafter she came to be promoted as Woman Head Constable w.e.f. 26-3-1982. Petitioner submits that thereafter she came to be promoted as 1st. Grade Head Constable in the year 1983. The petitioner was further promoted as Woman Police Sub Inspector on 26-1-1991 and she was ordered to report as Woman PSI in Special Branch Office in the Police Commissioner's Office at Ahmedabad. Petitioner further states that, thereafter on the opening of New Mahila Police Station, Old Karanj Bhavan, she came to be posted as Woman PSI w.e.f. 8-8-1991. The petitioner has stated that when she was serving as Woman PSI a case under the provisions of Prevention of Corruption Act came to be lodged against her and others by ACB being C.R. No: 16/92, Ahmedabad alleging that the petitioner had accepted an amount of Rs.500-00 as bribe. Said case came to be registered on or about 10-9-1992. On such a case being registered against the petitioner she came to be placed under suspension by Dy. Police Commissioner, Ahmedabad City, vide order dated 17-10-1992. The petitioner further states that Commissioner of police was pleased to grant sanction to prosecute the petitioner vide his order dated 25-1-1993. The ACB thereafter had filed chargesheet in the Court of Learned Special Judge, Ahmedabad on or about 22-4-1993 and she was tried for the offence under the Corruption Act. Learned Special Judge was pleased to record conviction under his order dated 30-7-1993 in Special Case No. 12/1993 and awarded sentence of 2 years R.I. and fine of Rs.500-00, and in default imprisonment for further 2 months. The petitioner has stated that, her appeal against the judgment & order of conviction passed by learned Special Judge, in Special Case No. 12/1993 is preferred before the High Court and the High Court has been pleased to admit the appeal and she has been granted bail in the said appeal. The petitioner has further stated that during pendency of the said appeal the respondent no.1 was pleased to pass an order dated 16-12-1993 dismissing the petitioner from service without affording opportunity of hearing to the petitioner.

Being aggrieved and dissatisfied with the said order of dismissal passed by respondent no.1 on 16-12-1993 at Annexure-A present petition is preferred by the petitioner.

3. The petitioner has mainly contended that the impugned order dated 16-12-1993 could not have been passed in view of the fact that the petitioner's appeal challenging her conviction in Special Case No. 12/1993 had been admitted by the Gujarat High Curt and she was granted bail therein. In view of pendency of the appeal against the conviction the respondent no.1 should not have passed impugned order dated 16-12-1993 based upon the conviction which is subject matter of her appeal before the High Court. The petitioner has further contended that the respondent no.1 while passing the impugned order dated 16-12-193 has erroneously and wrongly relied upon the ratio of the case of Tulsiram Patel and has wrongly passed the order without affording an opportunity of being heard to the petitioner. The petitioner has further contended that the principle of natural justice requires that while passing the order of dismissal of her conviction she ought to have been afforded an opportunity of being heard by issuance of show cause notice.

4. Ms. Pandit, learned AGP appearing on behalf of respondents has submitted that the law on the point has established since long. The convicted government employee has not right to be heard and it is open to the competent authority to pass appropriate order of dismissal or termination of service based upon the conviction of the government employee. The conviction of the government employee by the competent court itself is sufficient to pass an order of termination of service and the fact of admission of appeal challenging the conviction and releasing her on bail would be of no avail to the convicted government employee.

5. This Court had issued notice on 18-1-1994 and granted ad-interim relief in terms of Para-7 (c) to the petition. Thereafter on various occasions the matter was adjourned and the Court had issued rule on 17-12-1994 and directed that the interim relief granted earlier to continue. The petitioner being a Police Sub Inspector is governed by the provisions of the Bombay Police Act, 1951 and she is required to be dealt with accordingly. The respondent no.1. while passing the order has at length discussed the relevant constitutional provisions of Article 311 (2). The respondent no.1 has also observed in his order that in view of the conviction of the

petitioner under the offence under the Corruption Act and especially under section 13 (1) (d) the petitioner is not a fit person to be retained in police service. The respondent no.1 has also relied upon provisions of Section 26 of the Bombay Police Act, 1951 which in terms makes an exception to the requirement of show cause notice in cases covered by the proviso (a) to clause (2) of Article 311 of the Constitution. It is well established by now that the convicted government employee has no right to be retained in service only on account of appeal against the conviction being admitted and he being enlarged on bail. This point is no more res integra. The Full Bench of this Court in case of P.D. WAGHELA & ORS. v. G.C. RAIGER, DEPUTY I.G.P. & ORS., reported in 1994 (1) GLR, pg. 240 has concluded this point and held as under:-

" The conviction spoken to in clause (a) of the second proviso to clause (2) of Art. 311 to form a basis for the dismissal, removal or reduction in rank, could be one recorded by a competent Criminal Court in the first instance and the preferring of an appeal or revision against such conviction and the pendency of the same will not alter the position and action, taken on the basis of such conviction, need not conform to clause (2) of Art. 311, since by the express terms of the second proviso thereto, clause (2) of Art. 311 is dispensed with."

This Court in case of RAMBADAN R. SHUKLA & ANR V. DIST. SUPERINTENDENT OF POLICE & ANR, reported in 1997 (1) GLR pg. 352 has also relied upon the Full Bench judgment in case of P.D. Waghela (supra) and negatived the contention that the convicted employee has a right to receive show cause notice against the proposed punishment. In case of H.N. RAO V. STATE OF GUJARAT & ORS, reported in 2001 (2) GCD 945 (Guj) this Court has taken the same view on the point.

6. Simple reading of provisions of section 26 of the Bombay Police Act 1951 abundantly makes it clear that the convicted police officer governed by Bombay Police Act has no right to receive show cause notice on the action proposed to be taken against him in view of the proviso (a) to clause (2) of Art. 311 of the Constitution. In view of the aforesaid discussion the petition deserves to be dismissed as the same is bereft of any merits and is accordingly dismissed. Interim relief granted earlier stands vacated. Rule is discharged with no order as to costs.

Dt:31-01-2005 (S.R. BRAHMBHATT, J)

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